IN THE COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE JURISDICTION

COMPANY PETITION NO.412 OF 2006

M/s.Kesoram Industries Ltd . ...Petitioners
vs.
M/s.Nath Seeds Ltd ...Respondents

R.D.Suryavanshi for the petitioners.

K.V.Ramdasan for the respondents.

CORAM: S.C. DHARMADHIKARI, J.

18th January, 2007.

P.C :-

1. Heard Mr.Suryvanshi appearing for the petitioner and Mr.Ramdasan appearing for the respondent.

2. The petitioners seek winding up of the respondent company on the basis that the statutory notice which was sent by the petitioner on 2.10.2004

has not been replied to. On account of the non-compliance with the requisitions contained therein, this Company Petition deserves to be admitted according to the submission of Mr.Suryvanshi. He submits that the claim arises in the manner stated out in paragraphs 2 to 4 of the Company Petition and there is thus an admission of the liability. He has invited my attention to Annexure-A, which is an extract from the Books of Accounts of the petitioner. He submits that this extract was forwarded and thus the liability is admitted and acknowledged by the respondent. On behalf of the respondent an affidavit has been filed by the Manager and in paragraph 5 of the reply this is what is stated :

> "5. With reference to para no.2, I say that the company has made a payment of Rs.16 lakhs against the settlement of the claim of the petitioner and the last payment was made on 30.9.1998 and thereafter there was no transaction and/or writing between the petitioner and the company and as such, the claim of the petitioners in the above company petition is barred by the law of limitation. Therefore, the company petition filed on the ground of said alleged time barred claim is liable to be dismissed. Without prejudice to this, I deny that the company is liable to pay a sum of Rs.25,70,882/- and/or any other amount to the petitioner as alleged. The

entire claim of the petitioners is false and the same is also barred by the law of limitation.

3. It is in these circumstances, that the learned counsel appearing for the respondent submits that there is no question of any acknowledgement or admission of liability. There is a specific denial that the liability to make payment as on 31.6.2004 is admitted. In my view, considering the averments in paragraph 5 and 7 of the reply and the extract being in the books of the petitioner which without anything more being pointed out cannot be accepted. There is a bonafide disputes raised to the claim of the petitioner. The issue of limitation and payment in full and final settlement of the claim of the petitioner as early or as on 31.9.1998 are matters which cannot be gone into in the limited jurisdiction conferred on this court by Section 433 and 434 of the Companies Act. In the light of the stand of the respondent, the remedy of the petitioners lies elsewhere. Company Petition is accordingly dismissed.

sd/-

(S.C.DHARMADHIKARI, J)